THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. A. TONY BUFFINGTON, JOHN V. MAUTERER
and SARAH K. ABOOD

Appeal No. 96-3544
Application No. 08/296,856[1]

ON BRIEF

Before LYDDANE, McQUADE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 5 through 8 and 11. Claims 9 and 10 have been withdrawn from consideration as being drawn to a nonelected invention pursuant to the provisions of 37 CFR § 1.142(b). Claims 1 through 4 have been canceled.

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[1] Application for patent filed August 26, 1994. According to the appellants, the application is a continuation of Application No. 08/037,034, filed March 25, 1993, now abandoned.

We REVERSE.

BACKGROUND

The appellants' invention relates to a guide for gastrostomy tube placement in an animal. Claim 11 is representative of the subject matter on appeal and a copy of claim 11, as it appears in the appellants' brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of anticipation under 35 U.S.C. § 102(b) or obviousness under 35 U.S.C. § 103 are:

Binard et al. (Binard)	3,777,743	Dec. 11, 1973
Heyman	4,571,239	Feb. 18, 1986
Paxson	5,201,882	Apr. 13, 1993 (filed Nov. 1, 1990)

Claim 11 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Heyman.

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Heyman in view of Binard.

Claims 6 through 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Heyman in view of Binard and Paxson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the §§ 102(b) and 103 rejections, we make reference to the final rejection (Paper No. 17, mailed April 21, 1995), the examiner's answer (Paper No. 25, mailed March 6, 1996) and the supplemental examiner's answer (Paper No. 29, mailed February 7, 1997) for the examiner's complete reasoning in support of the rejections, and to the appellants' brief (Paper No. 24, filed November 20, 1995) and reply brief (Paper No. 26, filed April 4, 1996) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of independent claim 11 based on 35 U.S.C. § 102(b) as being anticipated by Heyman. After considering the teachings of Heyman, we agree with the appellants that the claimed invention is not anticipated by Heyman.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

The issue presented by the examiner and the appellants in this appeal is whether or not the recitation of claim 11 that

"the interior wall of the insertion end of the tube contoured outwardly from the insertion end axis, forming an angle with the axis less than 90 degrees to form a flared end" is met by Heyman.

It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

After reviewing the disclosure[2] of the application and the common definition of the word "end[3]," we find that we are in agreement with the appellants that the broadest reasonable interpretation consistent with the specification of the phrase

[2] See Figure 1 and page 6, lines 12-13, of the specification which state that "[t]he end of the guide tube 10 nearest the elbow 12 has an outwardly flared, bell-shaped end 18."

[3] The American Heritage Dictionary, Second College Edition, (1982) defines "end" as "either extremity of something that has length."

"the interior wall of the insertion end of the tube contoured outwardly from the insertion end axis, forming an angle with the axis less than 90 degrees to form a flared end" is that the "flared end" referred to in claim 11 is at the actual extremity of the claimed guide tube.

With this interpretation of the phrase, we agree with the appellants that Heyman does not anticipate claim 11 since Heyman does not disclose a "flared end" as recited in claim 11. While Heyman does have a flared portion intermediate the ends of stylet 24 and catheter 26, the extremity, or end is not flared. Thus, Heyman does not have a "flared end." Accordingly, we will not sustain the rejection of claim 11 based on 35 U.S.C. § 102(b) as being anticipated by Heyman.

We have also reviewed the Binard and Paxson references applied with Heyman in the rejection of dependent claims 5 through 8 under 35 U.S.C. § 103 but find nothing therein which would have suggested the deficiency of Heyman discussed above. Accordingly, we will not sustain the examiner's rejection of dependent claims 5 through 8 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claim 11 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claim 5 through 8 under 35 U.S.C. § 103 is reversed.

REVERSED

WILLIAM E. LYDDANE Administrative Patent Judge	)
JOHN P. McQUADE Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)

Appeal No. 96-3544
Application No. 08/296,856

FRANK H. FOSTER
KREMBLAS, FOSTER & MILLARD
7632 SLATE RIDGE BLVD.
REYNOLDSBURG, OH 43068

APPENDIX

11. A guide tube for insertion in an animal having a mouth, an esophagus and a stomach connected in series communication, for extending from the animal's mouth, through the esophagus into the animal's stomach and for aiding in the insertion of a gastrostomy tube in the animal, the apparatus comprising: a hollow, rigid tube having an interior wall contoured for guiding an end of a fiber pushed through the tube, an insertion end of the tube having an interior wall and a longitudinal axis bent away from a longitudinal axis of an opposite, handle end of the tube, the tube being at least as long as the distance from the mouth to the stomach, the tube having an outer diameter no greater than the esophagus, and the interior wall of the insertion end of the tube contoured outwardly from the insertion end axis, forming an angle with the axis less than 90 degrees to form a flared end.

APPEAL NO. 96-3544 - JUDGE NASE
APPLICATION NO. 08/296,856

APJ NASE

APJ LYDDANE

APJ McQUADE

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 18 Jun 98

FINAL TYPED: